

APPEAL NO. 93264

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city), Texas, on March 9, 1993, (hearing officer) presiding as hearing officer. He determined that the appellant (claimant) had been reimbursed for travel expenses as a supplementation of medical benefits to the extent to which she was entitled under Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 134.6 (TWCC Rule 134.6). Claimant appeals stating she has not been reimbursed for certain additional mileage and that the hearing officer erred in holding that rental of a car was not reasonably necessary. Respondent (carrier) urges that the decision is supported by the evidence and that it be affirmed.

DECISION

Not finding error in the hearing officer's application of TWCC Rule 134.6 in this case, and finding sufficient evidence to support his determinations, we affirm his decision.

The single issue in this case was stated and agreed to as: "Whether Claimant should be reimbursed for rental car expenses resulting from travel to attend health care appointments scheduled in (M), Texas."

That the claimant sustained a compensable injury of some nature concerning her back while employed in M, Texas was not in dispute. She had been under treatment with a doctor there and had undergone physical therapy. She subsequently moved to (H), (state) but continued going to physical therapy in M. She also went to a clinic in (state) at one time for treatment related to her injury. These expenses were apparently paid for by the carrier. The claimant testified that the physical therapy was absolutely necessary, that the particular therapy was not available in H, and that although she had an automobile, it had high mileage on it and she did not feel safe or comfortable driving it long distances. (In her appeal she also indicated for the first time that she had experienced some mechanical problems with her automobile at some time; however, we cannot appropriately consider this additional statement as evidence in disposing of the case. Texas Workers' Compensation Commission Appeal No. 92201, decided June 29, 1992.) She also testified that she is no longer driving to M because renting a car, which she asserted was a necessity, is too costly and is not being reimbursed by the carrier. She also stated she has been seeing an orthopaedic specialist in H. She stated she is far better off getting therapy and that she may eventually require surgery. She urged that under TWCC Rule 134.6 if it was a necessity for a state employee to obtain a rental vehicle, it would be reimbursed; therefore, since it was necessary for her to rent a vehicle to go to medically required therapy, her rental expenses should be covered and not just mileage. There was evidence that the trip involved was approximately 100 miles one way and that the carrier had paid her for each 200 mile round trip at the rate of .275 cents per mile. The hearing officer took official notice that the state rate for mileage was .275 cents per mile. The issue as framed at the hearing did not encompass "additional mileage" once located at the place of treatment i.e., going to and from the place of lodging and for meals, and is not addressed in this decision.

TWCC Rule 134.6, Travel Expenses, provides in pertinent part:

- (a) When it becomes reasonably necessary for an injured employee to travel in order to obtain appropriate and necessary medical care for the injured employee's compensable injury, the reasonable cost shall be paid by the insurance carrier. The reimbursement shall be based on the following guidelines:
 - (1) the mileage shall be greater than 20 miles, one way, to entitle the injured employee to travel reimbursement;
 - (2) reimbursement shall also be paid based upon the current travel rate for state employees. The shortest route between two points shall be used; and
 - (3) when travel involves food and lodging, these items will be based upon the current rate for state employees.
- (b) When emergency ambulance service is required, however, the insurance carrier shall pay at a fair and reasonable rate for ambulance service, until such time as fee guidelines are established by the commission.
- (c) An injured employee seeking reimbursement for travel expenses shall submit to the carrier a written request itemizing the mileage traveled and the expenses incurred. All receipts pertinent to the travel shall be attached to the request.
- (d) If the employee pays more for food and lodging than the current rate for state employees, the carrier may reduce the reimbursement to that allowed for state employees.

* * * * *

The hearing officer found that car rental for the trips in question was not reasonably necessary. We cannot say that there is not sufficient evidence of record, under the particular circumstances, to support the hearing officer's determination. He apparently did not find the claimant's testimony and her position on the issue persuasive. Of course, he is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Article 8308-6.34(e). His decision is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Texas Workers' Compensation Appeal No. 92232, decided July 20, 1992. We

cannot hold that a claimant is entitled to reimbursement for all expenses nor for expenses over and above the guidelines because the claimant elects to utilize some alternate mode of transportation. As we read and interpret the guidance under TWCC Rule 134.6 for reimbursement of expenses, it is apparent that the Commission forged a measurement for reasonableness and specifically did not provide that all or actual expenses would necessarily be covered. Just as in the situation where the employee elects to pay more than the state rate for food and lodging (TWCC Rule 134.6(d)), it seems consistent that the same remedy prevails where transportation cost, because the mode of transportation elected, exceeds the state rate. Indeed, the rule specifically sets forth that travel reimbursement shall be based upon the travel rate for state employees. TWCC Rule 134.6(a)(2). An exception is specifically provided where there is a need for emergency ambulance service. As we read the rule's overall scheme, it is apparent to us that an attempt was made to forge a method for reimbursement of reasonable expenses following specific guidelines and not necessarily to attempt to cover all expenses incurred. We believe the evidence supports a conclusion that there has been sufficient compliance with the guidance of TWCC Rule 134.6 in this case.

The decision of the hearing officer is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge